IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1395 of 2000
with
SPECIAL CIVIL APPLICATIONS NOS.3831 of 2000, 5136, 5145, 4872 of 1999, 1271 of 2001, 7434, 7441, 3078 of 1999, 6108 4847, 4840, 4844, 1605, 316, 1602 and 2099 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

FORWARD HIGH SCHOOL & OTHERS

Versus

SECRETARY

Appearance:

MR BD KARIA, NC SHAH, MP PRAJAPATI, JD AJMERA,
MM DESAI, RR VAKIL, BA VAISHNAV, MEHUL S SHAH
for petitioners.

MR ARUN D OZA GOVERNMENT PLEADER, VIPUL PANCHOLI
AGP, JS YADAV ADDL CENTRAL GOVT. COUNSEL for
respondents.

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/04/2001

C.A.V. JUDGEMENT

1. All these Special Civil Applications are filed by the respective managements of different petitioner schools challenging the orders of recovery of grant allowed and paid earlier by the State Government. The learned counsel appearing for the parties having agreed to address common arguments in all the matters and as such the petitions having been heard together on the common issues involved, they are disposed by this common judgment. The respective authorities under the State Government have filed affidavits-in-reply only in Special Civil Applications Nos.3078, 5136 of 1999, 1602, 4840, 4844, 4847 and 6108 of 2000, whereas the Union of India, through its Ministry of Human Resources, who were later on permitted to be joined as party respondent in each petition have preferred to rely upon a booklet of its "Scheme of Vocationalisation of Secondary Education".

2. The relevant common facts in brief in all the petitions are that the petitioners had started vocational education classes under the Scheme introduced by the State Government since the year 1987-88. The petitioners had obtained the necessary permission to start such courses in vocational stream for different trades and groups of subjects so as to be eligible for the grant from the Government. It must be noted at the out set that these courses in the vocational stream were introduced after the introduction of 10 + 2 pattern of secondary education and to provide an alternative at the +2 stage. While granting permission for such vocational courses, it was stipulated that the grants, qualifications of teachers, number of students, necessary equipments, average attendance etc. shall have to be in accordance with the rules prescribed by the Government and an undertaking in the prescribed form was also obtained from the management of the schools. The schools were granted varying amounts of grant for necessary equipments and construction or acquisition of accommodation under the Scheme of the Government. The schools were also allowed grants for maintenance and wages of the teachers. After starting the classes for vocational education in this manner and running the schools for several years, the courses could not be continued and the classes had to be closed for which

permissions were sought from the Government by the respective schools. The disputes arose as the Government insisted on recovering equipment grants on the ground that the courses in vocational education were close d before the completion of ten years. The schools having already spent the grants received for equipments and construction and as the amounts granted for the same were being demanded and also recovered from the other grants to the schools, they had rushed to this Court. In such circumstances, in several cases, this Court directed the petitioners to make representation voicing their grievances to the State Government and also directed the petitioners to file an undertaking to pay the amount of such grants in case the representation were decided against the petitioners. However, it was also ordered that, in case the Government decided the representation against the petitioners, the decision would not be implemented for a period of three weeks. Such adverse decisions of the Government after the aforesaid representations or the recovery of equipment grants are challenged in these petitions.

3. The main contention of the petitioners was that the special one-time grant paid to the petitioners for equipments and construction, which was duly spent and utilized, could not be ordered to be recovered under any resolution of the Government. It was submitted that these grants were paid under the special Scheme sponsored by the Central Government under which the State Government was only a disbursing agency and, therefore, none of the resolutions contained in the Grant-in-Code of the State applied to such grants. On the factual aspect of the cases it was submitted that the petitioners were, at no point of time and even at the stage of permitting closure of the classes, informed that the equipment grants would be recovered. It was submitted that after incurring the expenditure for the necessary equipments and construction and submitting the auditor's certificates of utilization of the grants by the petitioners, it was wholly unjust, improper and arbitrary to recover the amounts of such grants from the other grants being paid to the petitioners. The petitioners also pointed out from the impugned orders that they were not made by the signatory of the orders but were issued by and with concurrence of the signatory indicating their preparation by someone else. The petitioners relied upon the Resolution dated 8.7.1991 of the Education Department requiring the schools to undertake that the classes in the vocational stream shall not be closed down before three years. It was submitted that the petitioners had not closed down the classes within the period of three

years. As regards the reliance placed by the respondents on the Resolution dated 25.10.1983 stipulating recovery of the equipment grants if the courses were closed within ten years, it was vehemently urged that that Resolution did not apply to the grants in question as the same were paid under the special Scheme of the Central Government.

4. The stand of the State Government was that a policy was adopted since 1982-83 to regulate and encourage vocational courses at the higher secondary level and the necessary resolution prescribing the fees, set up as well as level of grants was issued in the form of the Government Resolution dated 25.10.1983. According to this original Scheme, grants @ 30% of non-recurring expenditure qua expenditure for the vocational stream were allowed with the condition that if the institution closed down the vocational stream within ten years, the payments towards non-recurring grants would be treated as loan and would be recovered with such interest as the Government may determine. This grant under the said resolution was restricted to 30% of the actual expenditure on necessary equipments upto the maximum of Rs.30,000/-. It was submitted that the grant paid for the courses in vocational stream was different from the grants paid for the other higher secondary classes and was not covered by any other resolution contained in the grant-in-aid Code as alleged by the petitioners. There was no dispute about the fact that the petitioner institutions had closed down the classes in the vocational stream within ten years of their starting and that was the ground on which the amounts were being recovered. It was also submitted by the learned Government Pleader that the institutions were required to file an undertaking at the time of accepting the grant even under the Central Scheme and, according to the conditions of the same, the State Government was entitled and required to recover the amounts of the special grants.

5. Considering the rival contentions, it is clear that the amounts of grant sought to be recovered from the petitioners were paid under the Scheme of the Central Government and the same were sought to be recovered in terms of the Resolution dated 25.10.1983 of the State Government. It is not the case of any of the petitioners that the State Government was applying different yardsticks in the matter of recovery of the grant. Therefore, it would be necessary to peruse the provisions of the Scheme of the Central Government under which the grant was paid to the petitioners in the first place. According to the "Scheme of Vocationalisation of

Secondary Education" published by the Department of Education of the Government of India, assistance was being given to the State Government and Non-Government Organisations for approved purposes in the pattern as given in Annexure-I to the Scheme. The Directorate of Education to be set up by the State Government was to be the implementing agency who gave financial assistance for conducting vocational education programmes. The Scheme relates various components and provides for management structure, selection of institutes and courses, curricula, instructional materials etc. The important and relevant provisions regarding "conditions of grants" were as under:

"CONDITIONS OF GRANT

(i) The grant receiving agency will be required to execute a bond on a prescribed form (appended). The bond should be supported by two sureties if the agency is not a legal entity.

(ii) An agency in receipt of financial assistance shall be open to inspection by an officer of the Union Ministry of Human Resource Development or the State Education Department.

(iii) The accounts of the project shall be maintained properly and separately and submitted as and when required. They should be open to check by an officer deputed by the Government of India or the State Government. They shall also be open to a test check by the Comptroller and Auditor General of India at his discretion.

(iv) The audited accounts together with the utilisation certificate in the prescribed form duly countersigned by the Chartered Accountants are required to be furnished within six months in respect of a preceding year or after expiry of the duration for which grant is approved.

(v) The agency shall maintain a record of all assets acquired wholly or substantially out of Government grant and maintain a register of such assets in the prescribed proforma. Such assets shall not be

disposed of, encumbered or utilised for the purposes other than those for which the grant was given, without prior sanction of the Government of India. Should the agency cease to exist at any time, such properties shall revert to the Government of India.

(vi) When the State Government/Government of India have reasons to believe that the sanctioned money is not being utilised for the approved purpose the payment of grant may be stopped and the earlier grants recovered.

(vii) The institution must exercise reasonable economy in the working of the approved project.

(viii) The grantee agency shall furnish to the Ministry of Human Resource Development reports as may be prescribed.

(ix) The decisions of the Secretary to the Government of India in the Ministry of Human Resource Development, Department of Education, on the question whether there has been breach or violation of any of the terms and conditions mentioned in the sanctioned letter shall be final and binding on the grantee."

5.1 The essential conditions of the grant in question clearly stipulate that when the sanctioned money was not being utilized for the approved purpose, the payment of grant can be stopped and the grants paid earlier can be recovered by the State Government in terms of the Condition No.(vi). And the agency receiving the grant is obliged to maintain a record of the assets acquired wholly or substantially out of the grant and not to utilise such assets for any purposes other than those for which the grant was given according to Condition No.(v) quoted hereinabove. Moreover, according to Condition No.(ix), any question as to whether any of the terms and conditions of the grant were violated has to be ultimately decided by the Secretary to the Government of India in the Ministry of Human Resource Development, Department of Education, whose decision would be final and binding on the grantee. Thus, the amounts of grant in question are sanctioned and paid under a comprehensive self-contained scheme, the conditions of which include

the condition of recovery in case of non-utilization of the assets acquired out of the grant and the condition for recovery of the grant by the State Government as also the condition for resolution of disputes regarding breach or violation of any of the terms and conditions of the grant. The Scheme also provides for executing a bond by the grantee in a form which contains an undertaking to duly fulfil and comply with all the conditions in the letter of sanction as also an undertaking to surrender to the Government the monetary value of all pecuniary or other benefits, or those derived from the use of the premises for any purpose other than for which the grant was intended. In this context, after the Union of India was joined as a party respondent, it was stated on their behalf that implementation of the Scheme was the responsibility of the State Government and the recovery of grants was the responsibility of the State Government concerned.

6. Thus, it appears that the vocationalisation of secondary education at the +2 level, which was receiving limited support from the State Government, received a boost when the Central Government sponsored Scheme was implemented with effect from 1.9.1988. Financial assistance under the Centrally sponsored scheme was canalised through the State Governments and the Central Scheme came to be implemented through the agency of, and in accordance with the rules of the State Government. In the facts of the present cases, the State Government appears to have found that the money sanctioned under the Central Scheme was not being utilized for the approved purposes, and hence they decided to recover the same. Therefore, it cannot be said that it was not within the powers of the State Government to recover the amounts of grant sanctioned under the Central Scheme. The important criterion contained in the conditions for recovery of the grant is that of the sanctioned money not being utilized for the approved purpose. It is wholly irrelevant whether the classes in vocational courses were closed with the permission of the State Government for genuine and valid reasons. Thus, the only objection to recovery that survived was that the Government was applying the criterion of the closure of the classes within ten years which was a stipulation in the G.R. dated 25.10.1983 of the State Government which, as per the submission, could not be applied to the payment of grant under the Central Scheme.

7. It is true that initially the State Government had resolved to pay equipment grants on ad-hoc basis at 30% of the actual expenditure subject to the maximum of

Rs.30,000/- for encouraging education in vocational stream at the higher secondary level as is evident from the Resolution dated 25.10.1983. Thereafter, the aforesaid Scheme of the Central Government appears to have come into operation and the State Government, as the implementing agency, has disbursed the grants for various purposes under the Scheme including 100% grants for equipments and construction. While implementing the Central Scheme, the State Government has resorted to the relevant clause of its own Resolution dated 25.10.1983 in applying the standard of ten years of continuation of the classes which condition continued to apply. This was decided and clarified by the G.R. No.TAK-1193-BC-46-G.1 dated 19.3.1998 (at Annexure-R page 93-94 in Spl.C.A. No.7441 of 1999) while increasing the amounts of grants for several purposes in respect of the vocational stream of higher education. Thus, failure to carry on the classes for ten years in the vocational courses is not one of the conditions of the grant under the Central Scheme, but appears to be uniformly adopted by the State Government from the aforesaid resolution under which grants under the State Scheme were disbursed. The contention that the grants in question in these petitions were not disbursed under the Resolution dated 25.10.1983 and, therefore, the conditions contained therein could not be applied for the recovery has to be examined in the context of the conditions of the Central Scheme. As seen earlier, the Central Scheme clearly stipulates that if the sanctioned money was not being utilized for the approved purpose, the grants should be recovered by the State Government in terms of Condition No.(vi) quoted hereinabove. An obligation is also cast upon the grantee to maintain record of all assets acquired only or substantially out of the grant and not to utilize them for any purpose other than those for which the grant was paid. Therefore, the term "utilized" in respect of the grant paid cannot be understood and interpreted in a narrow sense to mean that spending of the money received by way of grant was utilization. On the contrary, the conditions clearly stipulate that the assets acquired only or substantially out of the grant have to be utilized only for the purpose for which the grant was paid. Therefore, if any equipments or structure were acquired or constructed substantially out of the grant and upon cessation of the classes for vocational education, they ceased to be utilized for the purpose of those classes, the grants were liable to be recovered under the express condition of the grant. In this view of the matter, the adoption of the uniform standard of non-continuation of the classes for ten years for the purpose of recovery of the grant cannot be faulted but,

in fact, must be seen as being favourable to the grantee. Thus, it is found and held that the recovery and/or deduction of the grants under the Central Scheme paid for vocational stream of secondary education was within the powers and competence of the State Government and was also legal and in conformity with the Scheme of the Central Government. All the petitions are, therefore, liable to be rejected. No legal pr
relied upon on behalf of any of the petitioners.

8. In the result, all the petitions are rejected. Rule and notice in the respective petitions stand discharged and the interim relief, granted in some of the petitions, stand vacated with no order as to costs.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)